



Public Service Commission

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DATE: APRIL 19, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMPETITIVE SERVICES (M. WATTS)
DIVISION OF LEGAL SERVICES (B. KEATING/K. PENA)

RE: DOCKET NO. 010289-TI - PETITION FOR WAIVER OF RULE 25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION, BY PNG TELECOMMUNICATIONS, INC. D/B/A POWERNET GLOBAL COMMUNICATIONS.

AGENDA: 05/1/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010289.RCM

CASE BACKGROUND

On March 6, 2001, this Commission received a petition seeking a waiver of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, from PNG Telecommunications, Inc. d/b/a PowerNet Global Communications (the Petitioner). The Petitioner is a certificated interexchange carrier (IXC) operating in Florida. As a result of the acquisition of LDC Consultants, Inc. (LDC), a certificated switchless rebiller, the Petitioner agreed to purchase certain customer accounts from LDC. These accounts are comprised of all customers that have selected LDC as their preferred carrier for outbound, inbound, and calling card services.

The basis for seeking a waiver is set forth in Rule 25-24.455(4), Florida Administrative Code. The Commission may consider whether the petition is in the public interest, whether market forces obviate the need for the provision in a particular instance, and whether reasonable alternative regulatory methods may

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serve the same purpose. Rule 25-24.490, Florida Administrative Code, makes this waiver provision applicable to IXCs by incorporating Rule 25-4.118, Florida Administrative Code.

The Petitioner has informed staff that upon Commission approval of this petition, the transferring company will send out a letter to all affected customers notifying them of the following: the pending change of their carrier selection to PowerNet Global Communications; that there will be no charges associated with the change; that services will be provided at rates comparable to or lower than those charged by the current carrier; and that they have the option to select a different long distance provider if they prefer. The initial notification will also include a toll-free customer inquiry number that customers may call for more information.

This is not the first request in which a certificated company purchasing the customer base of another certificated company has come before the Commission seeking a waiver of the interexchange carrier selection rules. The Commission granted previous requests in Order Nos. PSC-00-1090-PAA-TI, issued June 6, 2000, and PSC-01-0050-PAA-TI, dated January 8, 2001.

The Commission is vested with jurisdiction over these matters pursuant to Sections 364.01, 364.183 and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should PNG Telecommunications, Inc. d/b/a PowerNet Global Communications be relieved in this instance of the interexchange carrier selection requirements of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

RECOMMENDATION: Yes. (M. Watts)

STAFF ANALYSIS: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's service provider shall not be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that an IXC shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service;
- (c) A third party firm has verified the customer's requested change.

Rule 25-24.455(4), Florida Administrative Code, states as follows:

An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:

- (a) The factors enumerated in Section 364.337(2), Fla. Statutes; [Now found in Section 364.337(4), F.S., 1999.]
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; and
- (c) Alternative regulatory requirements for the company which may serve the purposes of this Part.

Pursuant to Rule 25-24.490, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. The company has provided for

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a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. The customers will receive ample notification of the transfer and have the opportunity to choose another carrier. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their long distance service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Accordingly, staff recommends that the interexchange carrier selection requirements in Rule 25-4.118, Florida Administrative Code, be waived for the customer accounts affected by PNG Telecommunications, Inc. d/b/a PowerNet Global Communications' purchase of the wireline customer base of LDC Consultants, Inc.

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ISSUE : Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action order. **(B. Keating/K. Pena)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.